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INSURANCE REGULATORY EBULLETIN

ROUND UP OF REGULATORY DEVELOPMENTS IN JANUARY 2023

WELCOME TO OUR INSURANCE REGULATORY EBULLETIN

Welcome to this January 2023 edition of our Insurance Regulatory eBulletin, which aims to keep you updated with significant regulatory developments and their implications across the insurance sector.

January was a reasonably quiet month for new regulatory developments.

The PRA have issued a dear CEO letter, setting out 2023 priorities. This summarises that the focus will be on financial resilience; risk management; implementing financial reforms; reinsurance risk; operational resilience; and ease of exit for insurers.

This edition also notes the publishing of proposals to introduce a dedicated resolution regime for insurance firms. Under these proposals, the Bank of England would be provided with new powers and tools to effectively manage the failure of a major insurance firm, these proposals are currently in the consultation phase.

Two fines imposed by the FCA have been noted, both relating to money laundering. In the case of one of the banks, fined £7.6m, there is a clear message of the need to address weaknesses identified by the regulator, as it had previously been fined in August 2013 for serious and systemic failings. The FCA has commented that this bank should have acted quickly to put in place adequate AML controls.

This bulletin contains as much up to date regulatory news as we can gather. Inevitably, this may change as the current situation develops and we will aim to keep you informed in the future.

Please do not hesitate to contact myself or your usual BDO contact if you have any concerns over any matter highlighted in this update. For more information about our audit, tax and advisory services to the insurance sector, visit our insurance services page.

I hope you enjoy reading this latest update.

The Financial Services and Markets Bill is now progressed to the Committee stage in the House of Lords and we shall await the passage of this legislation.

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PRUDENTIAL REGULATION

LETTER FROM CHARLOTTE GERKEN AND SHOIB KHAN 'INSURANCE SUPERVISION: 2023 PRIORITIES'

On 10 January, the PRA published a letter providing an update on its priorities for the supervision of life and general insurers in 2023. The PRA's main focus for 2023 will be on financial resilience, risk management, implementing financial reforms, reinsurance risk, operational resilience and ease of exit for insurers.

FINANCIAL REGULATORY WORKING GROUP DECEMBER 2022 - JOINT STATEMENT

On 13 January, HMT and the US Department of the Treasury issued a joint statement on the seventh meeting of the UK-U.S. Financial Regulatory Working Group which took place in December 2022 in London. The Joint Statement outlines the main topics of discussion and key themes for cooperation between participants. Amongst other things, the Working Group discussed the importance of effective regulation and oversight of cryptoassets and markets, climate-related financial risk and sustainability and the progress of the International Sustainability Standards Board.

PRA STATEMENT ON THE RECALCULATION OF THE TRANSITIONAL MEASURE ON TECHNICAL PROVISIONS

On 6 January, the PRA issued a statement highlighting its invitation to insurance firms to recalculate the Transitional Measure on Technical Provisions (TMTP). The PRA has been monitoring market conditions since the previous biennial TMTP recalculation in December 2021, considering whether any changes in market conditions since previous recalculation points can reasonably be considered to have been sustained. In the PRA's view, movements in risk free rates during the second half of 2022 meet the threshold for a material change in market conditions as set out in Supervisory Statement 6/16 'Maintenance of the transitional measure on technical provisions' under Solvency II', potentially leading to a change in risk profile for firms.

INSURANCE STRESS TEST 2022 FEEDBACK

On 23 January, the PRA published the results of the PRA Insurance Stress Test 2022 (IST 2022), which was launched in May 2022. The results show that the UK insurance sector is resilient to the PRA-specified scenarios, subject to a number of mitigating measures. The PRA is highlighting and supporting the need for ongoing focus in several priority areas, including financial resilience, risk management and reinsurance risk.

INSURER RESOLUTION REGIME: CONSULTATION

26 January, HMT published a Consultation that sets out proposals to align the UK to international standards in insurer resolution, which would enhance the UK financial stability in the event of insurer failure. The proposals will provide the Bank of England with new powers and tools to effectively manage the failure of a major insurer, ensuring the UK is aligned with the relevant international standards. Use of these powers will be subject to statutory resolution objectives and conditions and will aim to minimise disruption to policyholders and the wider economy in the event of insurer failure.

Comments should be submitted by 20 April 2023.

PRA REGULATORY DIGEST - DECEMBER 2022

On 3 January, the PRA published the December 2022 edition of its Regulatory Digest, which highlights key regulatory news and publications for the month of December. Among other things, it includes an article on an update on the sixth edition of the Regulatory Initiatives Grid.

CONDUCT REGULATION

SPEECH: JESSICA RUSU - BUILDING BETTER FOUNDATIONS IN AI

On 24 January, Jessica Rusu, the FCA Chief Data, Information and Intelligence Officer, delivered a speech at The Alan Turing Institute's Framework for Responsible Adoption of Artificial Intelligence in the Financial Services Industry (FAIR) event. The key points of her speech were:

- AI regulation in financial services should be built on a platform of collaboration, with a clear focus on outcomes;
- the principles of inclusion and diversity of thought are essential to building better AI, with better data being needed to measure progress; and
- the innovation work the FCA is currently investing in will help lead to better regulatory outcomes.

PORTFOLIO LETTER: CLAIMS MANAGEMENT COMPANIES

On 5 January, the FCA wrote to Claims Management Companies (CMCs) setting out its updated view of the drivers of harm and risks that CMCs pose to their consumers or the markets in which they operate. The letter also outlined the FCA's expectation of CMCs, including how firms should be managing key risks. It also described the FCA's supervisory strategy and its programme of work to ensure firms are meeting expectations and that harms are being remedied and/or mitigated.

THEMATIC REVIEW OF RETIREMENT INCOME ADVICE

On 19 January, the FCA announced that it is undertaking a thematic review assessing the advice consumers are receiving on meeting their income needs in retirement. The review will begin in Q1 2023 with an aim to publish a report setting out findings in Q4 2023. The review will investigate how financial adviser firms are delivering retirement income advice, assess the quality of consumer outcomes, and examine how firms are responding to changing client needs due to the increased cost of living.

MEMORANDUM OF UNDERSTANDING BETWEEN ESMA AND THE FCA - EU CRITICAL BENCHMARKS

The European Securities and Markets Authority (ESMA) and the FCA have signed a Memorandum of Understanding (MoU) to establish a cooperation arrangement for the purposes of the UK Benchmarks Regulation. This is intended to provide ESMA and the FCA with an appropriate mechanism for the efficient exchange of information in relation to relevant EU critical and non-critical benchmarks.

This MoU is intended to:

- establish a cooperation arrangement between ESMA and the FCA for an efficient exchange of information; and
- confirm that the effective exercise of ESMA's supervisory functions under the Benchmarks Regulation is not prevented by the UK Laws and Regulations or UK administrative provisions, and no limitations on the FCA's ability to exercise the supervisory or investigatory powers awarded to it under the UK Benchmarks Regulation in respect of Covered Administrators.

CONSUMER DUTY IMPLEMENTATION PLANS

On 25 January, the FCA set out its findings and next steps following its review of firms' plans to embed the Consumer Duty. Many of the plans reviewed showed that firms have embraced the shift to focus on consumer outcomes, established programmes of work to embed the Duty, and are working through the requirements. However, the FCA did identify some plans that suggested firms may be further behind in their thinking and planning for the Duty, which brings the risk that they may not be ready in time or may struggle to embed the Duty effectively throughout their business. Key areas where firms should especially focus their attention in the second half of the implementation period are:

- effective prioritisation;
- embedding the substantive requirements;
- focusing on reducing the risk of poor consumer outcomes; and
- assessing where they are likely to be furthest away from the requirements of the Duty.

The FCA has published a new podcast on the Consumer Duty, with the FCA's Head of Competition Policy, Ed Smith. This focuses on the price and value outcome and explains how the regulator expects firms to assess their products and services to ensure there is a reasonable relationship between the price paid for a product / service and the overall benefit consumers get from it. Set against the impact of the rising cost of living, Mr Smith explains the importance of this outcome and how firms can best prepare for implementation of the Consumer Duty for new and existing products in July 2023.

A second podcast has also been published with the FCA's Manager of Consumer Policy, Richard Wilson. This explains the detail behind the outcome, the FCA's expectations, including how firms should test target markets, and the importance of identifying vulnerable customers.

CP23/1: INSURANCE GUIDANCE FOR THE SUPPORT OF CUSTOMERS IN FINANCIAL DIFFICULTY

On 11 January, the FCA issued a consultation paper on replacing the insurance aspects of its previous guidance for insurance and premium finance for customers in financial difficulty due to coronavirus (Covid-19), with insurance guidance that applies to all customers in financial difficulty. This consultation paper sets out proposals to help protect customers of non-investment insurance policies in financial difficulties and to provide clearer expectations of firms in supporting their customers.

Comments should be submitted by 11 March 2023. The FCA aims to publish a final Policy Statement, including its response to feedback, in Q2 2023.

CP23/4 VALUE FOR MONEY: A FRAMEWORK ON METRICS, STANDARDS AND DISCLOSURES

On 30 January, the FCA, Department for Work and Pensions (DWP), and the Pensions Regulator (TPR), issued a consultation paper seeking views and evidence on the metrics, standards and public disclosure of data required under the proposed Value for Money (VFM) framework and the proposed use of this data in comparisons and assessments of VFM. The overarching aim of the proposed VFM framework is to improve the value savers get from their defined contribution (DC) pension. The framework will improve comparability, transparency, and competition across DC pension schemes, and help schemes shift their focus from purely cost to a more considered and holistic assessment of value for money.

Comments should be submitted by 27 March 2023.

EXTERNAL AUDIT REQUIREMENTS

On 13 January, the FCA updated its page on external audit requirements for firms that are not regulated by the PRA. Details on audit requirements can be found in SUP 3 of the FCA Handbook, which firms are advised to review.

CONSUMER WARNING ON PRE-PAID PROBATE PLANS

On 27 January, the FCA issued a consumer warning on pre-paid probate plans. The FCA has advised consumers to consider carefully whether these products meet their needs and offer value before buying as there are no regulatory protections in place for them due to the fact that they are unregulated in the UK.

BRITISH STEEL PENSION REDRESS SCHEME LEGAL CHALLENGE

HMT has announced that a legal challenge has been made against its decision to set up a redress scheme for former British Steel Pension Scheme (BSPS) members. The challenge was made by a number of pension advisory firms who are members of the British Steel Action Group and advised by FS Law. HMT considers the legal challenge as an attempt to delay the payment of redress that is due to some former BSPS members. If the legal action causes scheme timings to change, HMT will let former BSPS members, firms and stakeholders know.

BSPS MISLEADING REDRESS OFFERS

The FCA has announced that it has become aware that certain firms are making unsolicited offers to former BSPS members who have not made complaints, and that four firms who are associated with the British Steel Action Group may be engaged in this conduct. The Financial Ombudsman Service has introduced a redress scheme for former BSPS members who have not complained and believes the actions by firms may be a deliberate attempt to exclude former members from participating in the scheme, binding them to receiving less money than they might be entitled to under the scheme. The FCA states that it is looking into these cases and will consider taking action against any firm it finds to be misleading consumers or making offers not calculated in line with its guidance.

CONSUMER REDRESS SCHEME FOR UNSUITABLE ADVICE TO TRANSFER OUT OF THE BSPS - ADDENDUM TO PS22/14

The FCA has published an addendum to its policy statement on a consumer redress scheme for unsuitable advice to transfer out of the BSPS (PS22/14). The addendum clarifies that, while the FCA modelled a reduction in estimated average redress as part of a sensitivity analysis it carried out on its estimates, this modelling does not change the central scenario used in its Cost Benefit Analysis (CBA).

EXTENDED ASSET RETENTION REQUIREMENT FOR FIRMS UNDER THE BRITISH STEEL PENSION SCHEME CONSUMER REDRESS SCHEME

The FCA has published Policy Statement PS23/1 which provides an update on the feedback it received to its consultation paper CP22/22 in relation to the proposed extension of the asset retention requirement for firms under the BSPS consumer redress scheme, and sets out the final rules that will now apply. The new rules affect firms that provided BSPS members with advice to transfer during the period of 26 May 2016 to 29 March 2018 (subject to certain exclusions) and their insurers.

On 27 January, the FCA published a letter to firms that have either received proceeds from BSPS transfers or continue to be involved in managing the transferred assets. The letter is to make sure that firms are aware of the obligations they have under the BSPS redress scheme, to ensure affected consumers receive fair redress in a timely way.

FG 23/1 OFFICE FOR PROFESSIONAL BODY ANTI-MONEY LAUNDERING SUPERVISION: SOURCEBOOK

On 10 January, the FCA published a summary of the feedback it received to its consultation on updating the Office for Professional Body Anti-Money Laundering Supervision (OPBAS): Sourcebook for professional body anti-money laundering supervisors (PBSs) to drive improvements in how PBSs reduce money laundering in the sectors they oversee. The key proposals included a new chapter outlining OPBAS's approach to supervision and to expand existing guidance including by providing examples of the outcomes which can demonstrate effective supervision and more examples of good and poor practice. The FCA will begin to assess PBSs against the revised OPBAS Sourcebook after publication of the OPBAS 4th report, and not before April 2023.

REPORTING REQUIREMENTS: MUTUAL SOCIETIES

The FCA has published an updated version of its reporting requirements for mutual societies. The document provides details of what regulated mutual societies, including credit unions, need to report, including annual controllers reports, annual returns and valuation returns. The update is effective from 12 January 2023.

FCA BOARD MINUTES: 24 NOVEMBER 2022

On 5 January, the FCA published the minutes of the FCA Board meeting held on 24 November 2022. Among other things, the Board was briefed on the business of the PRA including the Future Regulatory Framework and Solvency II, was briefed on the business of the Payment Systems Regulator (PSR) including the authorised push payments consultation and New Payments Architecture, and discussed the Financial Services and Markets Bill's new secondary 'international competitiveness and growth' objective for the FCA and PRA.

FCA BOARD MINUTES: 15 DECEMBER 2022

On 26 January, the FCA published the minutes of the FCA Board meeting held on 15 December 2022. Among other things, the meeting discussed the report from the Chair of the Joint Audit and Risk Committee (JARCO) on the transformation infrastructure programme; a report from the PRA on joint PRA/FCA work on Diversity and Inclusion; strategic and financial planning; and the Financial Services Compensation Scheme (FSCS) Management Expenses Levy Limit (MELL) 2023/24.

WHISTLEBLOWING QUARTERLY DATA 2022 Q3

On 12 January, the FCA released the whistleblowing quarterly data for 2022 Q3, which highlights the number of new whistleblowing reports the FCA received between July and September 2022 and how the information was received.

STATEMENT ON WIND-UP OF FSCB

The FCA has published a statement from Nikhil Rathi, Chief Executive of the FCA, on the wind-up of The Financial Services Culture Board (FSCB). The FCA will continue to work with the firms it regulates, particularly as they implement the new Consumer Duty, and will draw on many of the lessons learned from the FSCB.

REGULATION ROUND UP

On 26 January, the FCA published its monthly Regulation Round-up. In addition to various topics, detailed above, this noted the following:

- A reminder to respond to the s165 requests sent to principal firms for information about appointed representatives (ARs). Principal firms with ARs must respond to this request by 28 February.
- A reminder to submit a Competition and Markets Authority (CMA) – Private Motor Insurance (PMI) compliance report. PMI insurers and brokers had to submit this report to the CMA by 1 February 2023.

  This obligation arises from the CMA's PMI Market Investigation Order 2015.

EIOPA

We continue to monitor EIOPA's activity and draw your attention to it where we believe it to be necessary or helpful. This will, we hope, assist those firms continuing to operate in the EU.

Items of possible interest this month are as follows:

THEMATIC REPORT ON FINANCIAL EDUCATION INITIATIVES ON DIGITALISATION

The Joint Committee of the European Supervisory Authorities (ESAs) has published a thematic report on the implementation across the EU of national financial education initiatives on digitalisation, with a focus on cybersecurity, scams and fraud. The ESAs found the lack of financial literacy and unfamiliarity with digital technologies to be key drivers of these risks. To address this issue, the ESAs have decided to support national competent authorities (NCAs) on this topic. The report provides meaningful insights for NCAs and other public entities on good practices when designing and implementing financial education initiatives, thereby sharing experiences of other NCAs in the EU.

EIOPA - COSTS AND PAST PERFORMANCE REPORT 2023

On 17 January, EIOPA published a report on costs and past performance of insurance based investment products (IBIPs) for the European Economic Area (EEA) in 2021. The report provides an analysis of the costs and performance of IBIPs and pension schemes and products in the EEA for the period 2017-2021. The report found that past performance has been positively influenced by the post-COVID recovery which led to markets achieving high results in 2021. The report also sets out the next steps in the development of the IBIP sector.

CONSUMER TRENDS REPORT 2022

On 18 January, EIOPA published its Consumer Trends Report for 2022. The report provides an overview of consumers' financial health, cross-sectoral trends, insurance trends, and SMEs' financial health. The key findings of the report include:

- improved product design and distribution leading to better financial health;
- value for money concerns for some unit-linked and hybrid products;
- instances of inadequate advice and conflicts of interest impacting the value of products offered to consumers;
- the insurance protection gap affecting consumers' financial health - an existing trend accentuated by recent events;
- evidence of protection gaps; and
- pension trends.

EIOPA'S OPINION TO THE EUROPEAN COMMISSION ON EFRAG'S TECHNICAL ADVICE ON ESRS

EIOPA has published its opinion on the technical advice on the first set of European Sustainability Reporting Standards (ESRS), which the European Financial Reporting Advisory Group (EFRAG) submitted to the European Commission (EC) on 22 November 2022. The opinion assesses whether the ESRS:

- promote disclosure of material sustainability information of high quality;
- are consistent and interoperable with other EU legislation;
- are consistent and interoperable with global standard setting initiatives; and
- can be consistently and proportionately applied by undertakings.

The opinion sets out potential areas for the EC to consider when adopting the first set of standards, or possibly as part of further development of standards or application guidance.

2528 - REPORTING TEMPLATES

EIOPA has confirmed that S.04.03, S.04.04 and S.04.05 must be reported for each legal entity and each branch.

2536 - REPORTING TEMPLATES

EIOPA has confirmed that non-applicable facts must not be reported rather than reported as "0".

2540 - REPORTING (ART. 40 PEPP)

EIOPA has issued a response to a question regarding requirements surrounding Pan-European Personal Pension Product (PEPP) pension funds. As per this answer, if the entity does not provide any PEPP products, PEPP specific columns of its reporting forms do not have to be completed.

CORPORATE GOVERNANCE

FRC CONCLUDES NO CHANGES NEEDED TO AS TM1

On 30 January, the Financial Reporting Council (UK) (FRC) performed an updated review of the appropriateness of assumptions used under Actuarial Standard Technical Memorandum 1 (AS TM1). AS TM 1 sets out the required approach for producing the annual Statutory Money Purchase Illustrations (SMPIs) received by individuals saving for retirement in defined contribution pension plans. The FRC concluded that the assumptions set out in AS TM1 v5.0 are still appropriate, and as such will remain in force for SMPIs issued between 1 October 2023 and 5 April 2024.

INFORMATION COMMISSIONER'S OFFICE

We continue to monitor material being issued by the Information Commissioner's Office with a view to highlighting high-level matters that may be relevant to readers. There were no relevant matters to report published during January.

ENFORCEMENT ACTION

PRA / FCA REGULATORY FINES ROUND-UP

We have identified key relevant enforcement action during January and in this respect fines announced by the PRA / FCA were:

Al Rayan Bank Plc	The FCA has fined Al Rayan Bank £4,023,600 in relation to anti-money laundering (AML) failures. The FCA found that, between 1 April 2015 and 30 November 2017, the bank allowed transactions without carrying out appropriate checks. In particular, the bank failed to adequately check its customers' 'Source of Wealth' and 'Source of Funds'. The bank also failed to provide proper training to staff about how to handle large deposits, heightening the risk of money laundering and financial crime.
Guaranty Trust Bank (UK)	The FCA has fined Guaranty Trust Bank £7,671,800, in relation to its AML systems and controls between October 2014 and July 2019. The bank also failed to monitor customer transactions and business relationships to the required standard. These weaknesses were repeatedly highlighted to the bank by internal and external sources, including the FCA, but despite this, it failed to take appropriate action to fix them. The bank was previously fined in August 2013 for serious and systemic failings.

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